

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Lower Passaic River Study Area Portion of
the Diamond Alkali Superfund Site

In and About Essex, Hudson, Bergen and
Passaic Counties, New Jersey

Occidental Chemical Corporation,

Respondent.

UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL RESPONSE
ACTIVITIES

U.S. EPA Region 2
CERCLA Docket No. 02-2012-2020

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §9606(a)

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Unilateral Administrative Order (the "Order") is issued to Respondent Occidental Chemical Corporation by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B. This authority was further redelegated on November 23, 2004 by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division ("ERRD") by EPA Region 2 Delegation No. 14-14-B.
2. This Order pertains to the Lower Passaic River Study Area ("LPRSA") portion of the Diamond Alkali Superfund Site (the "Site") generally located in and about Essex, Hudson, Bergen and Passaic Counties, New Jersey.
3. This Order requires Respondent to conduct the removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual and/or threatened release of hazardous substances at or from the Site.
4. EPA has notified the State of New Jersey of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

5. This Order applies to and is binding upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.
6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order by any of its contractors, subcontractors, and representatives.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, the terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Order or in the appendices hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum/Enforcement" shall mean the EPA Action Memorandum relating to the Site signed on May 21, 2012, by the Director of the Emergency and Remedial Response Division, EPA Region 2, and all attachments thereto. The Action Memorandum/Enforcement is attached as Appendix B.

b. "Administrative Record" shall mean the administrative record established by EPA pursuant to Section 113(k) of CERCLA, 42 U.S.C. § 9613(k) supporting the response action that is the subject of this Order.

c. "Bench-Scale Tests" shall mean, individually and collectively, the bench-scale tests described in the SOW. The Bench-Scale Tests are intended to provide sufficient information to determine whether to undertake Pilot-Scale Tests.

d. "Bench-Scale Test Report" shall mean the report submitted to EPA upon completion of the Bench-Scale Tests.

e. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

f. "CPG" shall mean the Lower Passaic River Study Area Cooperating Parties Group.

g. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

h. "Effective Date" shall be the date that this Order is effective as provided in Section XXI.

i. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "Lower Passaic River Study Area" or "LPRSA" shall mean that portion of the Passaic River encompassing the 17-mile stretch of the Passaic River and its tributaries from Dundee Dam to Newark Bay located in and about Essex, Hudson, Bergen and

Passaic Counties, New Jersey. The LPRSA is part of the Site, as hereinafter defined.

l. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

m. "NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

n. "OSC" shall mean the On-Scene Coordinator designated by EPA pursuant to Paragraph 16 of the RM 10.9 Settlement Agreement.

o. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

p. "Parties" shall mean EPA and Respondent.

q. "Pilot-Scale Tests" shall mean, individually and collectively, the pilot-scale tests that RM 10.9 Settling Parties decide to undertake as described in the SOW, if any.

r. "RI/FS Settlement Agreement" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study, U.S. EPA Region 2, CERCLA Docket No. 02-2007-2009, effective May 8, 2007.

s. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

t. "RM 10.9 Removal Area" shall mean the approximately 5-acre area in the LPRSA within the RM 10.9 Study Area that is the subject of the Work to be performed under this Order. A figure showing the RM 10.9 Removal Area is attached as Appendix C.

u. "RM 10.9 Settlement Agreement" shall mean the Administrative Settlement Agreement and Order on Consent, Docket No. 02-2012-2015, effective on June 18, 2012. The RM 10.9 Settlement Agreement is attached as Appendix D.

v. "RM 10.9 Settling Parties" shall mean the signatories to the RM 10.9 Settlement Agreement.

w. "RM 10.9 Study Area" shall mean the area of sediments on the eastern side of the LPRSA that extends approximately 2,380 feet from RM 10.65 to RM 11.1, along an inside bend of the river upstream of the Delesse-Avondale Street Bridge and that includes the mudflat and point bar in the eastern half of the river channel.

x. "RPM" shall mean the Remedial Project Manager currently designated by EPA under Paragraph 34 of the RI/FS Settlement Agreement, or his or her successor or successors.

y. "Section" shall mean a portion of this Order identified by a Roman numeral.

z. "Site" for purposes of this Order shall mean the Diamond Alkali Superfund Site, including the Diamond Alkali plant located at 80 and 120 Lister Avenue in Newark, New Jersey, and the Lower Passaic River Study Area, and the areal extent of contamination.

aa. "State" shall mean the State of New Jersey.

bb. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action in the RM 10.9 Removal Area, attached as Appendix A to this Order, and any modifications made thereto in accordance with the RM 10.9 Settlement Agreement.

cc. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

dd. "Work" shall mean all activities Respondent is required to perform under this Order.

IV. EPA FINDINGS OF FACT

8. EPA makes the following findings of fact:

a. Since at least the early 1800s, the LPRSA has been a highly industrialized waterway, receiving direct and indirect discharges from numerous industrial facilities, as well as discharges and bypasses from sewage treatment facilities and surface water runoff.

b. Between March 1951 and August 1969, the Diamond Alkali Company operated a facility at 80 Lister Avenue, in Newark, New Jersey. Among other chemicals, the company manufactured dichlorodiphenyl trichloroethane ("DDT"), 2,4-dichlorophenoxy acetic acid ("2,4-D"), 2,4,5-trichlorophenol ("2,4,5-TCP"), and 2,4,5-trichlorophenoxy acetic acid ("2,4,5-T"), a by-product of which is 2,3,7,8-Tetrachloro-dibenzo-p-dioxin ("2,3,7,8-TCDD"). Production activities at the Diamond Alkali facility ceased in August 1969.

c. In 1967, Diamond Alkali Company changed its name to Diamond Shamrock Corporation. In 1983, it changed its name to Diamond Shamrock Chemicals Company. On September 4, 1986, all outstanding stock in Diamond Shamrock Chemicals Company was acquired by Oxy-Diamond Alkali Corporation, a wholly-owned indirect subsidiary of Occidental Petroleum Corporation. Diamond Shamrock Chemicals Company changed its name to Occidental Electrochemicals Corporation. Effective November 30, 1987, Occidental Electrochemicals Corporation was merged into Occidental Chemical Corporation.

d. In 1983, hazardous substances were detected at various locations in Newark, New Jersey, including the Diamond Alkali facility located at 80 Lister Avenue.

e. EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, placed the Diamond Alkali Superfund Site on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37070.

f. Pursuant to Administrative Orders on Consent with NJDEP, Diamond Shamrock Chemicals Company conducted investigations and response work for the 80 and 120 Lister Avenue portion of the Diamond Alkali Superfund Site. The investigation included the sampling and assessment of sediment contamination within the Passaic River.

g. Sampling and assessment of sediments in the lower reaches of the Passaic River revealed the presence of many hazardous substances including, but not limited to, polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (collectively, "PCDDs/PCDFs"), polychlorinated biphenyls ("PCBs"), polyaromatic hydrocarbons ("PAHs"), DDT, dieldrin, chlordane, mercury, cadmium, copper, and lead. Hazardous substances identified in the sediments included elevated concentrations of 2,3,7,8-TCDD, known to have been generated at the Diamond Alkali facility.

h. EPA issued a Record of Decision ("ROD") that set forth an interim remedy for the 80 and 120 Lister Avenue portion of the Diamond Alkali Superfund Site on September 30, 1987. Pursuant to a judicial Consent Decree with EPA and NJDEP, Respondent and Chemical Land Holdings, Inc. (now known as Tierra Solutions, Inc.), which had acquired the property shortly before the 1986 stock transaction and was a party to the Consent Decree for specific, limited purposes, agreed to implement the 1987 ROD. The interim remedy was completed in 2004.

i. Respondent, as successor to Diamond Shamrock Chemicals Company, executed an Administrative Order on Consent ("AOC"), Index No. II-CERCLA-0117 with EPA to investigate a six-mile stretch of the Passaic River whose southern boundary was the abandoned Conrail Railroad bridge located at the U.S. Army Corps of Engineers

("USACE") station designation of 40+00 to a transect six miles upriver located at the USACE station designation of 356+80. The primary objectives of the investigation were to determine: (1) the spatial distribution and concentration of hazardous substances, both horizontally and vertically in the sediments; (2) the primary human and ecological receptors of contaminated sediments; and (3) the transport of contaminated sediment.

j. The sampling results from the investigation of the six-mile area and other environmental studies demonstrated that evaluation of a larger area was necessary because sediments contaminated with hazardous substances and other potential sources of hazardous substances are present along at least the entire LPRSA. Further, the tidal nature of the Lower Passaic River has resulted in greater dispersion of hazardous substances.

k. Sampling results show concentrations of PCDDs/PCDFs, PCBs, mercury, and other substances that in some areas significantly exceed the levels that can produce toxic effects to biota. Based on the results of monitoring and research undertaken since the mid-1970s, the State of New Jersey has taken a number of steps, in the form of consumption advisories, closures, and sales bans, to limit the exposure of the fish-eating public to toxic contaminants in the lower Passaic River, Newark Bay, the Hackensack River, the Arthur Kill and the Kill Van Kull. The initial measures prohibited the sale, and advised against the consumption, of several species of fish and eel and were based on the presence of PCB contamination in the seafood. The discovery of widespread dioxin contamination in the LPRSA and Newark Bay led the State of New Jersey to issue a number of fish consumption advisories in 1983 and 1984 which prohibited the sale or consumption of all fish, shellfish, and crustaceans from the LPRSA. These State fish advisories and prohibitions are still in effect.

l. EPA commenced a remedial investigation and feasibility study ("RI/FS") encompassing the 17-mile LPRSA. In May 2007, the CPG entered into the RI/FS Settlement Agreement, under which it agreed to complete the RI/FS for the LPRSA. The work pursuant to the RI/FS Settlement Agreement is ongoing under the direction and oversight of EPA. The RI/FS is being performed under CERCLA and has been coordinated with the USACE and the New Jersey Department of Transportation, its local sponsor until 2009, and NJDEP under the authority of the Water Resources Development Act ("WRDA") in order to identify and address water quality improvement, remediation, and restoration opportunities in the LPRSA. Further, the federal and State Natural Resource Trustees (the Fish and Wildlife Service of the U.S. Department of the Interior, the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, and NJDEP) have provided input to the process. Concurrently, EPA is performing a Focused Feasibility Study with respect to an eight-mile portion of the LPRSA.

m. Although the LPRSA ends at the mouth of Passaic River, because of the tidal nature of the Passaic River, there is reason to believe that the areal extent of

contamination extends beyond that boundary. Consequently, in order to determine more accurately the boundaries of contamination from the area studied originally under the AOC, in February 2004, EPA and Respondent entered into an AOC to perform an RI/FS for Newark Bay. This RI/FS is also ongoing.

n. As part of the RI/FS for the LPRSA, EPA and the CPG have collected and analyzed sediment samples throughout the LPRSA.

o. Sediment samples collected in the RM 10.9 Study Area suggested that significantly elevated concentrations of PCDDs/PCDFs, PCBs, mercury, PAHs and other contaminants might be present in this area. In April 2011, the CPG proposed, and EPA agreed, that the CPG would undertake additional sampling and analysis, and perform bathymetry and hydrodynamic survey work, to characterize and develop information about the extent of contamination in the RM 10.9 Study Area. The data from the samples collected by the CPG confirmed that portions of the sediment located in the RM 10.9 Study Area, which includes a mudflat on the eastern shore of the Passaic River that is exposed at low tide, contains significantly elevated concentrations of PCDDs/PCDFs, PCBs, mercury, PAHs and other hazardous substances. In the first six inches of sediment, peak concentrations detected include 2,3,7,8-TCDD at 21.6 parts per billion ("ppb"), PCBs at 34 parts per million ("ppm"), mercury at 22 ppm and high molecular weight PAHs at 510 ppm. These concentrations represent some of the highest surface concentrations observed in the Passaic River. Elevated concentrations of PCDDs/PCDFs, PCBs and mercury are generally co-located in surface and subsurface sediments.

p. A park owned by Bergen County is located on the eastern shore of the River at the RM 10.9 Study Area, directly adjacent to the mudflat that forms part of the highly contaminated area of sediment. Individuals utilizing the River, including boaters, waders and anglers, could be exposed to the sediments. The sediment at the surface is also exposed to erosion and resuspension and thus may act as a source of contamination to other parts of the river, including the lower eight miles.

q. EPA and the CPG engaged in discussions concerning the removal activities required by the RM 10.9 Settlement Agreement from February 2012 through late May 2012.

r. In or about late May 2012, EPA and the RM 10.9 Settling Parties reached agreement on the SOW attached as Appendix A. Pursuant to the RM 10.9 Settlement Agreement, the RM 10.9 Settling Parties have agreed to perform the removal activities described in the SOW.

s. Respondent was given the opportunity to consent to perform the removal activities required by this Order by entering into the RM 10.9 Settlement Agreement as one of the RM 10.9 Settling Parties, but did not do so.

V. EPA CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on EPA's Findings of Fact set forth above, EPA has determined that:

a. The LPRSA is a "facility" as defined in Section 101(9) of CERCLA, § 9601(9).

b. The contamination found at the RM 10.9 Study Area includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), that may present an imminent and substantial endangerment pursuant to Sections 104(a)(1) and 106(a) of CERCLA, 42 U.S.C. §§ 9604(a)(1) and 9606(a).

c. The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from a facility as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

d. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

e. Respondent is a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622. Respondent is a person that owned and/or operated the 80 Lister Avenue portion of the Site at the time of disposal of hazardous substances and that arranged for disposal of hazardous substances at the LPRSA, which is part of the Site. Respondent therefore may be liable under Sections 107(a)(2) and (a)(3) of CERCLA, 42 U.S.C. § 9607(a)(2) and (a)(3).

f. The conditions in the sediments at the RM 10.9 Study Area meet a number of the specific factors identified in 40 C.F.R. § 300.415(b)(2) for EPA to consider in determining the appropriateness of a removal action, including, but not limited to:

i. an actual or potential release of hazardous substances, including PCDDs/PCDFs, PCBs, mercury and PAHs, exposing nearby human populations, animals or the food chain (40 C.F.R. §300.415(b)(2)(i));

ii. actual or potential contamination of sensitive ecosystems due to the presence of hazardous substances, including PCDDs/PCDFs, PCBs, mercury and PAHs (40 C.F.R. §300.415(b)(2)(ii)); and

iii. high levels of hazardous substances, including PCDDs/PCDFs, PCBs, mercury and PAHs, present at or near the surface of the sediment that could migrate or be released due to weather and/or hydrologic conditions (40 C.F.R. §300.415(b)(2)(iv)-(v)).

g. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, and the entirety of the Administrative Record, EPA has determined that the release or threatened release of hazardous substances from RM 10.9 Removal Area may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

h. The removal action required by this Order is necessary to protect the public health, welfare or the environment, is in the public interest, 42 U.S.C. § 9622(a), and, if carried out in accordance with this Order, the SOW and the Work Plan, will be consistent with CERCLA and the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. NOTICE

10. EPA has notified NJDEP of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VII. ORDER

11. Based upon the foregoing, EPA hereby orders Respondent to comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

VIII. PARTICIPATION AND COOPERATION

12. The RM 10.9 Settlement Agreement requires the RM 10.9 Settling Parties to conduct the same response actions as those required by this Order. Respondent shall make best efforts to coordinate with the RM 10.9 Settling Parties. Best efforts to coordinate shall include, at a minimum:
 - a. communication with the RM 10.9 Settling Parties in writing within five (5) days of the Effective Date of this Order concerning the substance of Respondent's notice to EPA of its intent to comply with this Order, consistent with Section XXIII, below;
 - b. submission within fourteen (14) days of the Effective Date of this Order of a good-faith offer to the RM 10.9 Settling Parties to implement the SOW, in whole or in part, or in lieu of performance to pay for the work required under the SOW, in whole or in part; and
 - c. engaging in good-faith negotiations with the RM 10.9 Settling Parties to perform, in whole or in part, or in lieu of performance to pay for the work required by the SOW, in whole or in part, if the RM 10.9 Settling Parties refuses Respondent's first offer.

13. To the extent the RM 10.9 Settling Parties are performing the work required pursuant to the RM 10.9 Settlement Agreement, Respondent shall make best efforts to participate in the performance of the SOW with the RM 10.9 Settling Parties. Best efforts to participate shall include, at a minimum:
 - a. performance of such work required under the SOW that the Respondent and the RM 10.9 Settling Parties agree is to be undertaken by Respondent; and
 - b. payment of all amounts that Respondent and the RM 10.9 Settling Parties agree are to be paid by Respondent if, in lieu of performance, Respondent has offered to pay for the work required under the SOW, in whole or in part.
14. Respondent shall provide EPA with notice of its intent to comply with this Order, consistent with Section XXIII, below, and with a copy of its good faith offer to the RM 10.9 Settling Parties pursuant to Paragraph 12(b). Respondent shall notify EPA in writing: (1) within five (5) days of the rejection, if any, by the RM 10.9 Settling Parties of Respondent's offer to perform, in whole or in part, or, in lieu of performance, to pay for the work required under the SOW, in whole or in part; and/or (2) within five (5) days of reaching agreement with the RM 10.9 Settling Parties with respect to the Work to be undertaken by Respondent or the amount to be paid by Respondent in lieu of performance.
15. The undertaking or completion of any requirement of this Order by any other person, with or without the participation of Respondent, shall not relieve Respondent of its obligation to perform each and every other requirement of this Order.
16. Any failure to perform, in whole or in part, any requirement of the SOW by any other person with whom Respondent is coordinating or participating in the performance of such requirement shall not relieve Respondent of its obligation to perform each and every requirement of this Order.

IX. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

17. Selection of Contractors, Personnel. All Work performed under this Order shall be under the direction and supervision of qualified personnel. Within fourteen (14) days after reaching agreement with the RM 10.9 Settling Parties on the Work, Respondent shall notify EPA in writing of the names and qualifications of the contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. Respondent shall also notify EPA of the names and qualifications of any other contractors, subcontractors, consultants and laboratories to be used in carrying out the Work at least ten (10) days prior to their commencement of their particular aspect of the Work. The qualifications of the contractors, subcontractors, consultants and laboratories undertaking the Work for Respondent shall be subject to EPA's review, for verification that such contractors,

subcontractors, consultants and laboratories meet minimum technical background and experience requirements. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASIC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"), prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. If EPA disapproves in writing of any of the technical qualifications of any contractors, subcontractors, consultants and laboratories, Respondent shall notify EPA of the identity and qualifications of the replacements within thirty (30) days of the written notice.

18. Within fourteen (14) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during on-site Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within ten (10) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.
19. EPA has designated RPM Stephanie Vaughn as its Project Coordinator. EPA may designate an On-Scene Coordinator ("OSC") from the Removal Action Branch in the Emergency and Remedial Response Division, Region 2 to oversee the Work. At EPA's discretion, the OSC will work collaboratively with the Project Coordinator to provide field oversight of the Work and review plans, reports and other documents submitted by Respondent. If EPA does not designate an OSC, EPA's Project Coordinator shall have the authority lawfully vested in an RPM and an OSC by the NCP, including the authority to halt any Work required by this Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work.
20. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA fourteen (14) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. EPA will notify Respondent of a change of its designated Project Coordinator, in writing and if possible, ten (10) days before such a change is made.

21. EPA may arrange for a qualified person to assist in its oversight and review of the conduct of the Work, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but shall not modify the Work Plan.

X. REMOVAL ACTION

22. Respondent shall conduct the removal activities necessary to implement the SOW in participation and cooperation with the RM 10.9 Settling Parties, and in accordance with CERCLA, the NCP, relevant guidance that EPA identifies to Respondent, and the Removal/Capping Work Plan/Basis of Design Report ("BODR") and the Removal/Capping Final Design approved by EPA under the RM 10.9 Settlement Agreement, as they may be amended or modified by EPA.
23. Respondent shall, in participation and cooperation with the RM 10.9 Settling Parties, submit to EPA a work plan for performance of the Work to be conducted by Respondent, determined as a result of Respondent's communications and negotiations with the RM 10.9 Settling Parties pursuant to Paragraphs 12 and 13 ("Work Plan"). The schedule for implementation of the Work Plan must correspond with and allow for the implementation of the removal action by the RM 10.9 Settling Parties pursuant to the schedule in the SOW, and the Removal/Capping Work Plan/BODR and the Removal/Capping Final Design approved by EPA under the RM 10.9 Settlement Agreement.
24. Health and Safety Plan. Respondent shall, in participation and cooperation with the RM 10.9 Settling Parties, submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of Work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the Work.
25. Quality Assurance and Sampling.
- a. Respondent shall use quality assurance, quality control, and chain of custody procedures for all design, compliance, and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondent of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any sampling or monitoring project under this Order, Respondent shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW and the NCP. Respondent shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Order. Respondent shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4," and the "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2," and any amendments made thereto during the course of the implementation of this Order; however, upon approval by EPA, Respondent may use other analytical methods that are as stringent as or more stringent than the CLP-approved methods. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent quality assurance/quality control ("QA/QC") program. Respondent shall use only laboratories that have a documented Quality System that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

26. Upon request, Respondent shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Respondent shall notify EPA not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. EPA shall have the right to collect additional samples, in which case EPA will notify Respondent and upon request, allow split or duplicate samples to be taken by Respondent if Respondent is able to do so in a timely manner.
27. Respondent shall submit to EPA copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to the Site and/or the implementation of this Order unless EPA agrees otherwise.
28. Modifications.
 - a. The OSC, in consultation with the RPM, may make modifications to any work plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction.
 - b. In the event of unanticipated or changed circumstances, Respondent shall notify

the EPA Project Coordinator by telephone within twenty-four (24) hours of discovery by Respondent of the unanticipated or changed circumstances. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 28(a). Respondent may request minor field modifications within the scope of any EPA-approved work plan or schedule without submission of a formal amendment, and the OSC may authorize minor field modifications to any approved work plan provided that any such modifications are consistent with the SOW, and the modifications are memorialized in writing.

- c. EPA may determine that tasks in addition to those in the initially approved Work Plan are necessary to accomplish the objectives of this Order. Within thirty (30) days of receipt of EPA's notice that additional work is necessary, Respondent shall submit for EPA's approval a work plan modified in accordance with EPA's determination. Upon EPA's approval of the plan pursuant to Section XI, Respondent shall implement the work plan for additional work in accordance with the provisions and schedule contained therein.
- d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

29. Off-Site Shipment of Waste Material.

- a. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator.
- b. Respondent shall include in the written notification required by Subparagraph 29(a) the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
- c. Respondent shall provide the information required by Subparagraphs 29(b) and 29(d) as soon as practicable after EPA approval of the Work Plan and before the Waste Material is actually shipped.

- d. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.
30. Meetings. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the removal action. In addition to discussion of the technical aspects of the removal and capping of the RM 10.9 Removal Area, topics will include anticipated problems or new issues. Meetings will be scheduled at reasonable times and at EPA's discretion.
31. Community Involvement. EPA will conduct community involvement activities in accordance with the Lower Passaic River Restoration Project and Newark Bay Study Final Community Involvement Plan (June 2006) ("CIP"). Although implementation of the CIP is the responsibility of EPA, Respondent shall assist by providing information for dissemination to the public and participating in public meetings. The extent of Respondent's involvement in community involvement activities is left to the discretion of EPA. All Respondent-conducted community involvement activities pursuant to the CIP will be subject to oversight by EPA.
32. Reporting. Respondent shall submit a monthly progress report to EPA concerning actions undertaken pursuant to this Order on the 15th day of every month after the Effective Date until termination of this Order, unless otherwise directed in writing EPA. At a minimum, with respect to the preceding month, these progress reports shall (1) describe the actions which have been taken to comply with this Order during that month, (2) describe Work planned for the next forty-five (45) days with schedules relating such Work to the overall project schedule, and (3) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays. If an event of significance occurs, such as a fire or injury, this shall be documented in writing and the written report shall be submitted to EPA within three (3) days of the event.
33. Except as otherwise provided in this Order, Respondent shall submit copies of all plans, reports or other submissions required by this Order, the SOW, or any approved work plan, in electronic form or, upon request, in paper form. One copy of each report shall be submitted to the following:

U.S. Environmental Protection Agency
2890 Woodbridge Avenue
Edison, New Jersey 08837
Attn: Lower Passaic River Study Area On-Scene Coordinator

Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866
Attn: Lower Passaic River Study Area Remedial Project Manager

Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Attn: Lower Passaic River Study Area Site Attorney

New Jersey Department of Environmental Protection
Site Remediation Program
401 E. State Street
P.O. Box 028
Trenton, New Jersey 08265-0028
Attn: Lower Passaic River Study Area Project Manager

In the event that EPA requests more than the number of copies of any report or other documents required by this Order for itself or NJDEP, Respondent shall provide the number of copies requested.

34. Final Report.

Within 90 days after completion of all Work required by this Order, Settling Parties shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties

for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

35. Emergency Response and Notification of Releases.

- a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC, or, in the event of his/her unavailability, the EPA Regional Emergency 24-hour telephone number 732-548-8730 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, EPA may respond to the release or endangerment and reserves the right to pursue cost recovery for all costs of response not inconsistent with the NCP.
- b. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 732-548-8730 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or document that is required to be submitted for approval pursuant to this Order, EPA shall, in writing: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. If EPA disapproves or requires modifications to any plan, report or other document required to be submitted to EPA for approval pursuant to this Order, Respondent shall have fourteen (14) days from the receipt of EPA's notice of disapproval or modification to address each of EPA's comments, correct any deficiencies and resubmit the plan, report or other document for EPA's approval, unless EPA specifies a shorter or longer time in the notice.

37. If EPA disapproves a resubmitted plan, report or other document, or portion thereof, EPA may again direct Respondent to correct the deficiencies, and/or EPA may modify or develop the plan, report or other item. Respondent shall implement any such plan, report, or item as corrected, modified or developed by EPA.
38. If upon resubmission, a plan, report, or other document is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or document timely and adequately.
39. All plans, reports, and other items submitted to EPA under this Order shall, upon approval or modification by EPA, be incorporated into and enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other item submitted to EPA under this Order, the approved or modified portion shall be incorporated into and enforceable under this Order.
40. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

XIII. ACCESS TO INFORMATION AND PROPERTY

41. Access to Information.
 - a. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work. Such persons shall be made available at reasonable times and upon reasonable request of EPA.
 - b. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section

104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Order for which Respondent asserts business confidentiality claims.

- c. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.
- d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

- 42. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.
- 43. If any portion of the Site, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide EPA and the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.
- 44. Where any action under this Order is to be performed by Respondent in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within ninety (90) days after the Effective Date, or as otherwise specified in writing by the EPA Project Coordinator. If additional areas to which access is necessary are identified after the Effective Date, Respondent shall use its best efforts to obtain access agreements within sixty (60) days after learning of the need for the additional access. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements, describing in writing its efforts to obtain access. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. If Respondent cannot obtain access agreements within the time allowed, EPA may either (i) obtain access for

Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; or (iii) terminate the Order. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

45. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

46. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). No local, state or federal permits shall be required for any portion of the Work conducted entirely on-Site (which means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action) if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws. If any portion of the Work is to be conducted off-Site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other action necessary to obtain and comply with such permits or approvals. If Respondent is experiencing difficulties obtaining permits and approvals required to conduct the Work, Respondent shall so advise EPA, and Respondent and EPA will discuss a strategy for obtaining the permits in the most expeditious and cost-effective manner.

XIV. RECORD RETENTION

47. During the pendency of this Order and for a minimum of six (6) years after Respondent's receipt of EPA's notification pursuant to Section XXIV (Notice of Completion), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until six (6) years after Respondent's receipt of EPA's notification pursuant to Section XXIV (Notice of Completion), Respondent shall instruct its contractors and agents to preserve all

documents, records, and information of whatever kind, nature or description relating to performance of the Work.

48. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.
49. Within ninety (90) days after the Effective Date of this Order, Respondent shall submit a written certification to EPA's RPM that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability with regard to the Site since notification of potential liability by the United States or the State of New Jersey or the filing of suit against it regarding the Site. Respondent shall not dispose of any such documents without prior written approval by EPA. Respondent shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

XV. DELAY IN PERFORMANCE

50. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's RPM within 48 hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of and the reasons for the delay, the duration of the delay, any justification for delay, the measures planned and taken to prevent or minimize the delay, a schedule for implementing the measures that will be taken to prevent or mitigate the effect of the delay, and any other reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order are not a justification for any delay in performance.
51. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations

to fully perform all obligations under the terms and conditions of this Order.

XVI. OTHER CLAIMS

52. By issuance of this Order, or by issuance of any approvals pursuant to this Order, the United States and EPA assume no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or Respondent's employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order, including Respondent's failure to perform properly or complete the requirements of this Order. The United States and EPA shall not be held out as or deemed to be a party to any contract entered into by Respondent or its employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.
53. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. § 111(a)(2), and 40 C.F.R. § 300.700(d).
54. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XVII. INSURANCE

55. At least fifteen (15) days prior to commencing any on-site Work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of five (5) million dollars, combined single limit, naming the EPA as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVIII. FINANCIAL ASSURANCE

56. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within 60 days after the Effective Date of this Order, one of the following: (1) a surety bond unconditionally guaranteeing payment and/or performance of the Work; (2)

one or more irrevocable letters of credit, payable to or at the direction of EPA; (3) a trust fund; (4) a corporate guarantee to perform the Work provided by Respondent, or one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with Respondent; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. § 264.143(f); or (5) a policy of insurance. Any mechanism provided by Respondent in satisfaction of this Paragraph shall be in form and substance acceptable to EPA, as determined in EPA's sole discretion. Respondent shall demonstrate financial assurance in an amount no less than five (5) million dollars. If Respondent seeks to demonstrate ability to complete the Work by means of internal financial information, or by guarantee of a third party, it shall re-submit the required financial and other information annually, on the anniversary of the Effective Date of this Order. If EPA determines that such financial information is inadequate, Respondent shall, within 30 days after receipt of EPA's notice of such determination, obtain and present to EPA for approval one of the other forms of financial assurance listed above.

XIX. ACCESS TO ADMINISTRATIVE RECORD

57. The Administrative Record supporting the removal action at RM 10.9 is available for review at the Region 2 Superfund Records Center, 290 Broadway, 18th floor, New York, NY 10007 (212) 637-4308, the Lyndhurst Public Library, 355 Valley Brook Avenue, Lyndhurst, NJ 07071, and the Newark Public Library, 5 Washington Street, Newark, NJ 07102.

XX. ENFORCEMENT AND RESERVATIONS

58. Respondent shall be subject to civil penalties under Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), in the event that Respondent willfully violates, or fails or refuses to comply with this Order without sufficient cause. Such civil penalties shall be in an amount not greater than \$37,500 per day, subject to possible further adjustments of this penalty maximum consistent with the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and all amendments thereto. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.
59. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and/or for any other response costs which have been incurred or will be incurred by the United States relating to the Site. This reservation shall include but not be limited to past costs, direct costs, indirect costs, and the costs of oversight, the

costs of compiling the cost documentation to support an oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

60. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), or any other applicable law.
61. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.
62. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing in this Order shall constitute a finding that Respondent is the only responsible party with respect to the release or threatened release of hazardous substances at or from the Site.
63. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXI. EFFECTIVE DATE AND COMPUTATION OF TIME

64. This Order shall be effective fifteen (15) days after execution by EPA, unless a conference is timely requested pursuant to Section XXII, below. If such conference is timely requested, this Order shall become effective three (3) days following the date the conference is held, unless the Effective Date is modified by EPA. All times for performance of ordered activities shall be calculated from this Effective Date.

XXII. OPPORTUNITY TO CONFER

65. Respondent may, within five (5) days of the date that this Order is received by Respondent, request a conference with EPA to discuss this Order. If requested, the conference shall occur within five (5) days of Respondent's request for a conference.

66. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.
67. Requests for a conference must be by telephone followed by written confirmation mailed that day to:

Sarah Flanagan
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, N.Y. 10007-1866
Telephone: (212) 637-3136

XXIII. NOTICE OF INTENT TO COMPLY

68. Respondent shall provide, not later than five (5) days after the Effective Date, written notice to EPA's RPM and the Assistant Regional Counsel identified in Paragraph 67 stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to perform the work required by this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice(s) shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defenses asserted by Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be acceptance of Respondent's assertions.

XXIV. NOTICE OF COMPLETION

69. When EPA determines, after EPA's review of the Final Report, that the Work has been fully performed in accordance with this Order, EPA will provide notice to Respondent. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. Respondent shall implement the additional removal activities and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved additional removal activities shall be a violation of this Order. Such an approval by EPA, however, shall not relieve

Respondent of any remaining obligations under the Order, including those requirements set forth in Section XIV regarding record preservation.

So Ordered this 25th day of June, 2012.

By: 
WALTER MUGDAN

Director, Emergency and Remedial Response Division
Region 2
U.S. Environmental Protection Agency